

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEVON J. SCOLLARD,

Plaintiff,

v.

STAFFORD CREEK CORRECTIONS

CENTER, et al.,

Defendant.

Case No. 3:22-cv-05851-TMC-TLF

ORDER ADOPTING REPORT AND  
RECOMMENDATION

The Court, having reviewed the Report and Recommendation of Judge Theresa L. Fricke, United States Magistrate Judge, objections to the report and recommendation, if any, and the remaining record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation;
- (2) Defendants' motion to dismiss (Dkt. 31) is GRANTED IN PART and DENIED IN PART.

- a. Defendants' motion (Dkt. 31) is GRANTED and the following claims are dismissed *without prejudice*: plaintiff's due process claims (Counts I, II, and III); plaintiff's retaliation claims against defendant Ivey related to his transfer,

1 against D. Brewer related to the issuance of a “notice of abuse by quantity”,  
2 and his generalized allegations of retaliation that are not linked to any  
3 defendant; plaintiff’s Eighth Amendment claims based on the violation of his  
4 due process rights in the disciplinary hearings, and based on his placement in  
5 max custody or an indeterminate placement in max custody as itself  
6 constituting a violation.

7 b. Defendants’ motion (Dkt. 31) is GRANTED and the following claims are  
8 dismissed *with prejudice*: plaintiff’s official capacity claims for damages.

9 c. Defendants’ motion (Dkt. 31) is DENIED and the following claims will  
10 proceed: plaintiff’s retaliation claims against defendants Ivey and Villanobos  
11 related to the search of his cell, and against Sergeant Johnson related to his  
12 statements to plaintiff about grievances; plaintiff’s Eighth Amendment claims  
13 related to the alleged disproportionality of his punishment to his alleged non-  
14 violent offenses (even if he was properly found guilty), and plaintiff’s  
15 challenges to the specific conditions of the confinement (including prolonged  
16 duration, social isolation, lack of programming opportunities, plaintiff’s pre-  
17 existing anxiety, and the alleged deterioration of his pre-existing mental health  
18 issues).

19 (3) Plaintiff is granted leave to file an amended complaint with respect to the  
20 following dismissed claims:

21 a. his due process claims and Eighth Amendment claims that rely on a finding  
22 plaintiff’s due process rights were violated only *if* plaintiff can show his  
23 disciplinary hearing guilty findings have been invalidated.

24 b. his dismissed retaliation and Eighth Amendment claims.

c. the potential additional due process claim, whether substantive or procedural, (addressed at pp. 19-20 and 41 n. 5 of the Report and Recommendation), if plaintiff has law and facts to support that claim.

d. Any amended complaint addressing these claims must be filed within thirty (30) days of this order.

(4) Plaintiff's motion for partial summary judgment (Dkt. 14) is DENIED *without prejudice*.


(5) Plaintiff's motion for telephonic hearing and oral argument (Dkt. 8), plaintiff's motion for preliminary injunction (Dkt. 7), plaintiff's motion for temporary restraining order (TRO) (Dkt. 48), and plaintiff's motion for reconsideration of the Court's order denying appointment of pro bono counsel (Dkt. 47) are DENIED.

(6) Plaintiff's *in forma pauperis* status should continue on appeal.

(7) The matter is referred back to Judge Fricke for further proceedings.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 28th day of September, 2023.

  
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Tiffany M. Cartwright  
United States District Court Judge